



**Federal Communications Commission  
Washington, D.C. 20554**

June 8, 2010

**DA 10-1043**

*In Reply Refer to:*

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In re: **NCE October 2007 Window  
MX Group Number 377**

NEW NCE(FM), Clinton, Missouri  
Facility ID No. 171651  
Network of Glory, LLC  
File No. BNPED-20071019AFG

New NCE(FM), Harrisonville, Missouri  
Facility ID No. 175084  
The Helpline  
File No. BNPED-20071019BCP

**Petitions for Reconsideration**

Gentlemen:

We have before us the captioned application of Network of Glory, LLC (“Glory”) for a construction permit for a new noncommercial educational (“NCE”) FM station in Clinton, Missouri (“Glory Application”). We also have before us a Petition for Reconsideration filed on April 30, 2009 (“April Petition”), and a Petition for Reconsideration filed on June 12, 2009 (“June Petition”), by The Helpline (“Helpline”), each directed against the Media Bureau’s (“Bureau”) decision regarding its application for a new NCE station in Harrisonville, Missouri (“Helpline Application”).<sup>1</sup> For the reasons set forth below, we (1) dismiss the April Petition as procedurally defective, (2) deny the June Petition, and (3) grant the Glory Application.

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<sup>1</sup> On May 13, 2009, the Helpline Application was dismissed. See *Broadcast Actions*, Public Notice, Report No. 46984 (MB 2009).

**Background.** Helpline was among six mutually exclusive applicants for an NCE FM station construction permit.<sup>2</sup> These applications, which propose to serve six different communities in Missouri and Kansas, were designated NCE MX Group 377. Pursuant to established procedures,<sup>3</sup> on March 31, 2009, the Bureau determined that the Glory Application was entitled to a decisive preference under Section 307(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> and identified Glory as the tentative selectee in NCE MX Group 377.<sup>5</sup> In reaching this decision, the Bureau noted that the “respective new first NCE services claimed by Glory, [Calvary Chapel of Johnson County, Inc.], and Helpline [were] 34,097 people, 21,286 people, and 8,946 people.”<sup>6</sup> It further noted that “Helpline erroneously attempted to enhance its fair distribution position in an amendment filed on January 7, 2008<sup>7</sup> [but that the Bureau used] the lower numbers it originally provided.”<sup>8</sup>

The Bureau’s tentative selection of the Glory Application triggered a 30-day period for filing of petitions to deny. Helpline filed the April Petition, “seek[ing] reconsideration [of the *2009 Fair Distribution Order*] with respect to MX Group 377.”<sup>9</sup> Upon dismissal of its application on May 13, 2009, Helpline filed the June Petition, seeking the reinstatement and grant of its application, and incorporating by reference arguments raised in the April Petition.

In its pleadings, Helpline argues that the Commission erred by using the 8,946 figure in making its Section 307(b) determination. It contends that its original application, filed on October 19, 2007, “inadvertently stated” that its proposal would provide a first NCE aural service to 8,946 people, and that the “correct” proposal, contained in the Amended Application, proposed first NCE aural service to 37,309 people and second service to 7,286 people.<sup>10</sup>

Helpline argues that several factors support the Bureau’s consideration of the Amended Application. First, it notes that, with respect to the evaluation of applicants under the point system, the FCC Form 340 explicitly provides that “Applicants will not receive any additional points for amendments made after the close of application filing window.” However, it argues that the Bureau is not so

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<sup>2</sup> See *Threshold Fair Distribution Analysis of 21 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 3873, 3880 (MB 2009) (“*2009 Fair Distribution MO&O*”).

<sup>3</sup> See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (“*NCE Comparative Order*”); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001) (“*NCE MO&O*”), partially reversed on other grounds, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>4</sup> 47 U.S.C. § 307(b). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Comparative Order*, 15 FCC Rcd at 7397.

<sup>5</sup> See *2009 Fair Distribution MO&O*, 24 FCC Rcd at 3890 (finding Glory to be the tentative selectee because it proposed new first NCE service to 34,097 people, which was at least 5,000 more people than the next-best proposal).

<sup>6</sup> *2009 Fair Distribution MO&O*, 24 FCC Rcd at 3880.

<sup>7</sup> See Exhibits 10 and 11 of the amended Helpline Application (“Amended Application”).

<sup>8</sup> See *2009 Fair Distribution MO&O*, 24 FCC Rcd at n.31.

<sup>9</sup> April Petition at 1.

<sup>10</sup> *Id.* at 2.

constrained with respect to applications evaluated under a fair distribution analysis because a “similar statement is **not** made in Section III Fair Distribution of Service Pursuant to 47 U.S.C. Section 307(b).”<sup>11</sup> It further asserts that, “absent an engineering proposal to specify a new site or greater effective radiated power, there is no way an applicant can manipulate its responses [regarding first and second service].”<sup>12</sup> Finally, Helpline contends that consideration of its Amended Application “is in the public interest.”<sup>13</sup> Therefore, Helpline avers, the Commission should have used the figures contained in its Amended Application and found that its proposal was entitled to a preference based on new first and second NCE service.

**Discussion.** At the outset, we find that the April Petition is procedurally improper. Section 1.106(a)(1) of the Commission's Rules specifically prohibits petitions for reconsideration of interlocutory actions.<sup>14</sup> The *2009 Fair Distribution MO&O*, which did not dispose of a single application in NCE MX Group 377, was an interlocutory action.<sup>15</sup> Accordingly, we dismiss the April Petition.<sup>16</sup>

In addition, we deny the June petition. The Public Notice establishing the procedures for the October 2007 NCE window (“*2007 Public Notice*”) explicitly stated that fair distribution analyses “will be based on service and population data *as of the close of the window.*”<sup>17</sup> The *2007 Public Notice* further stated that the “Commission will not take into account any enhancement in an applicant's comparative position after the close of the window.”<sup>18</sup> The subject NCE window opened on Friday, October 12, 2007, and closed on Friday, October 19, 2007.<sup>19</sup> Helpline’s Amended Application was filed almost three months after the close of the window and therefore was well outside the period to be considered in making the fair distribution analysis.

The Bureau has repeatedly rejected NCE applicants’ attempts to enhance their fair distribution comparative standing after the close of the filing window.<sup>20</sup> It has also rejected amendments that enhance

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<sup>11</sup> *Id.* at 1 (emphasis in original).

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. §1.106(a)(1).

<sup>15</sup> See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency's action is final and reviewable only if, *inter alia*, it “mark[s] the ‘consummation’ of the agency's decision making process - it must not be of a merely tentative or interlocutory nature.”) (internal quotes and cites omitted). See also *2009 Fair Distribution MO&O*, 24 FCC Rcd at 3890 (explaining that “[Network] is . . . TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clinton, Missouri. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee’s application, we intend, by public notice TO DISMISS the mutually exclusive applications . . .”).

<sup>16</sup> We note that the arguments made in the April Petition are properly before us as a result of Helpline’s June Petition. We address them herein as a result.

<sup>17</sup> *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12 – October 19, 2007 Window; Limited Application Filing Freeze to Commence on September 8, 2007*, Public Notice, 22 FCC Rcd 15050, 15052 (MB 2007) (emphasis added).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 15050.

<sup>20</sup> See, e.g., *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations File in the October 2007 Filing Window*, Memorandum

applicant's comparative standings even though their original comparative standings were allegedly based on mistaken data.<sup>21</sup> Therefore, we reject Helpline's assertion that the Bureau should have considered the enhanced population numbers provided in its Amended Application. Accordingly, we affirm the staff dismissal of the Helpline Application.

Additionally, we have examined the Glory Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant will further the public interest, convenience, and necessity.

**Conclusion/Actions.** Accordingly, IT IS ORDERED, that The Helpline's Petition for Reconsideration filed on April 30, 2009, IS DISMISSED, and the Petition for Reconsideration filed on June 12, 2009, IS DENIED.

IT IS FURTHER ORDERED THAT the application for a new noncommercial educational FM station at Clinton, Missouri (File No. BNPED-20071019AFG) filed by Network of Glory, LLC, IS GRANTED, subject to the condition that Network of Glory, LLC, must operate technical facilities substantially as proposed for a period of four years of on-air operations.<sup>22</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Community Broadcasting, Inc.  
Coalition of Hispanic Women Against Cancer, Inc.  
Network of Glory, LLC  
Calvary Chapel of Johnson County, Inc.  
The Helpline  
Full Smile, Inc.

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Opinion and Order, 25 FCC Rcd 1687, 1697 (2010) (2010) (finding that an applicant's amendment was a prohibited attempt to enhance where the amendment claimed, for the first time, eligibility for fair distribution preference and was filed after the close of the filing window); *Threshold Fair Distribution Analysis of 22 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 14531, 14534 (MB 2009) (same).

<sup>21</sup> See *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390, 12394-12395 (MB 2009) (finding that an applicant's amendment was a prohibited attempt to enhance its comparative position when the initial application erroneously used population data from a different community than that which applicant proposed to serve).

<sup>22</sup> See 47 C.F.R. § 73.7002(c).